United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

76-6104

ORIGINAL

To be argued by
RICHARD W. ROSEN

B

In The

United States Court of Appeals

For The Second Circuit

CHARLES BROWNSELL and CAZILIE BROWNSELL,

Appellants,

P/S

-against-

ARCHIE DAVIDSON and JOAN BOYD,

Appellees.

BRIEF AND APPENDIX FOR APPELLANTS

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -x

CHARLES BROWNSELL and CAZILIE BROWNSELL,

Appellants,

- against -

Docket No. 76-6104

ARCHIE DAVIDSON and JOAN BOYD,

Appellees.

- -x

BRIEF FOR APPELLANTS

PRELIMINARY STATEMENT

This is an appeal from the memorandum of Judge Lloyd F. MacMahon, dated May 7, 1976, granting the appellees' motion for summary judgment on the pleadings and dismissing the complaint.

ISSUES

Whether the Court below properly granted the motion for summary judgment dismissing the complaint.

NATURE OF THE CASE

This action is grounded upon the complaint of the

appellants that the appellees engaged in conduct constituting a prima facie tort, and requesting damages flowing therefrom.

COURSE OF THE PROCEEDINGS BELOW

A summons, with notice, dated October 2, 1975, commenced the action in the Supreme Court of the State of New York, Rockland County. The said summons was served upon appellee Davidson on October 5, 1975 and upon appellee Boyd on October 6, 1975. By petition dated and filed October 22, 1976, the appellees removed the action to the United States District Court For The Southern District of New York, pursuant to 28 U.S.C. Section 1441(a)(1). Following a pre-trial conference had with Judge MacMahon on March 15, 1976, the appellants served their complaint on March 22, 1976, and the appellees answered on April 2, 1976.

By motion dated April 16, 1976, the appellees moved the Court below for a judgment on the pleadings, returnable before Judge MacMahon on April 30, 1976. By memorandum dated May 7, 1976, Judge MacMahon granted appellees' motion for judgment on the pleadings and dismissed the complaint. It is from this disposition of the case by Judge MacMahon which gives rise to the instant appeal.

FACTS

Appellant Charles Brownsell was at all times material to the action a letter carrier employed at the New City, New York Post Office. Appellant Cazilie Brownsell, is the wife of appellant Charles Brownsell. Prior to October 1972, appellant Charles Brownsell sustained several on-the-job injuries. On or about October 6, 1972 appellant Charles Brownsell was advised by the appellee Davidson that his employment relationship was being severed, terminated or otherwise interrupted, until he was capable of performing all the duties of his position, notwithstanding the fact that prior to such date and subsequent thereto, other employees of the New City Post Office, letter carriers and others, who suffered from long-term illnesses and disabilities were otherwise treated, in that they were allowed to perform light duties, that is, not their full duties, and were also permitted to perform their duties on a less than full time basis.

In connection with the on-the-job injuries mentioned above, appellees Davidson and Boyd failed, refused and neglected to process official claims forms, for compensation purposes, relating to those injuries. In point of fact, appellant Charles Brownsell did receive his lawful compensation benefits, but

they were not received and did not commence until the year 1974.

On April 4, 1973 and July 24, 1973, appellant Charles Brownsell filed charges against the United States Postal Service with the National Labor Relations Board, which were assigned Case Nos. 2-CA-12926(P) and 2-CA-13052(P). On or about September 22, 1975, appellant Charles Brownsell, the United States Postal Service and the National Labor Relations Board entered into a settlement agreement, consisting of two parts which were incorporated together by reference, which agreement was approved on September 23, 1975. By the terms of the settlement agreement, appellant Charles Brownsell was to receive the sum of $5,000.00 against lost wages; credits toward annual and sick leave; a waiver by the United States Postal Service of a certain claim based upon overpayment for leave time; reinstatement as a letter carrier; and, the United States Postal Service was required to post at the New City Post Office a notice to employees supplied by the National Labor Relations Board.

As alleged in the complaint, the acts and conduct of the appellees were done willfully, maliciously and without legal authority causing appellant Charles Brownsell monetary losses in addition to lost wages, and he was required to expend money for legal services in connection with the procurement and

obtaining of his claim benefits for on-the-job injuries and to obtain his reinstatement through the National Labor Relations Board. Moreover, as alleged in the complaint, both appellants were forced and required to seek the aid of the Rockland County Social Services Department through an application for and the receipt of welfare benefits. Both appellants, in addition, suffered serious and irreparable physical, emotional, mental and psychological injuries and anguish as a result of the appellees' conduct, in that the appellants were subjected to gross embarrassment because of the delay and receipt of wages and compensation benefits and the loss of employment of the appellant Charles Brownsell, both appellants being subjected to unusual and deep debt, requiring that they be placed upon the welfare rolls of the Rockland County Social Services Department.

POINT I

THE NATIONAL LABOR RELATIONS BOARD DOES NOT HAVE SOLE JURISDICTION OF THE CLAIMS ASSERTED IN THE COMPLAINT; THE FEDERAL AND STATE COURTS DO HAVE SUBJECT MATTER JURISDICTION; AND, THE SETTLEMENT AGREEMENT THROUGH THE NATIONAL LABOR RELATIONS BOARD DOES NOT CONSTITUTE ACCORD AND SATISFACTION SO AS TO BAR THE PRESENT ACTION.

The Court below ruled that the allegations of the complaint are essentially claims of unfair labor practices under Section 8(a) of the National Labor Relations Act, and that the

National Labor Relations Board has exclusive jurisdiction over claims arguably subject to that Act. In support of the decision, the Court below relied upon San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245(1959).

While the appellants concede that a portion of the subject matter of their suit falls within the jurisdiction of the National Labor Relations Board, under the National Labor Relations Act, as amended, in that the complained of acts and conduct of the appellees constituted unfair labor practices, the basis for the instant action lies upon the ground that the acts and conduct of the appellees are civil wrongs not within the purview of the National Labor Relations Act, as amended, nor contemplated by such statute. Moreover, that such statute does not solely afford the appellants relief for the injuries done to them. The National Labor Relations Act, as amended, was designed with the purpose of remedying public wrongs, against public policy, as set forth in Section 1 of such Act. Section 1 provides as follows:

"(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare and to protect the rights of the public in connection with labor disputes affecting commerce."

Section 101 of the statute, Subsection 1, provides generally, as a finding and policy of the United States, that the denial by some employers of the right of their employees to organize led to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce. That experience has provided that protection by law of the rights of employees to engage in concerted activities promotes the free flow of commerce and removes the sources of industrial strife and unrest. The policy is then declared on the part of the United States to eliminate certain substantial obstructions to the free flow of commerce and to mitigate and eliminate those obstructions by encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom to self-organize, the designation of representatives of their own choosing, and

for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The wrongs and injuries complained of by the appellants are private wrongs not remedied by or touched upon in the areas of the public wrongs set forth in the National Labor Relations Act, as amended, administered by the National Labor Relations Board. The United States Supreme Court, in San Diego Building Trades Council v. Garmon, supra, lends weight to the position taken by the appellants herein. There the Court stated at page 245:

"Our concern is with delineating areas of conduct which must be free from State regulation if national policy is to be left unhampered." (Underlining supplied)

The San Diego case reached the United States Supreme Court in the posture of an attempt by a state to assume jurisdiction, through the issuance of a labor injunction, which under the National Labor Relations Act, as amended, reposed solely with the National Labor Relations Board. Certainly, the substance and subject matter of the instant action does not interfere with nor does it even touch upon national labor policy. Moreover, the national labor policy does not afford the appellants with a remedy for the wrongs flowing from the acts and conduct of the appellees.

The appellants are unaware of any case law which would preclude them from pursuing remedies for the private wrongs imposed upon them flowing from the acts and conduct of the appellees. As a matter of fact, Section 301 of the National Labor Relations Act, as amended, provides for suits by and against labor organizations to be heard and processed through the various United States District Courts. This is presumably in addition to the right to pursue remedies through the various state courts. Section 303 of the National Labor Relations Act, as amended, further provides that private remedies may be sought and processed through the various United States District Courts for monetary damages, being the enforcement of private rights. There is then apparently adequate statutory authority for the instant action to enforce private claims.

As the facts in this action disclose, the settlement agreement, through the National Labor Relations Board, runs between the appellant Charles Brownsell, the United States Postal Service and the National Labor Relations Board. It is significant for the purposes of this action, that neither of the appellees Davidson or Boyd were parties to the National Labor Relations Board proceedings, either as respondents or parties in interest. Therefore, the settlement agreement through

the National Labor Relations Board, did not constitute an accord and satisfaction in favor of the appellees. As will be seen in Point II below, the acts and conduct of the appellees did not fall within the scope and parameters of their authority, or even the outer perimeters of their authority, and, therefore, they were not entitled to enjoy the benefits of any accord and satisfaction in favor of the United States Postal Service, through the National Labor Relations Board settlement. But beyond that, it is the contention of the appellants that whatever benefits flowed to the appellant Charles Brownsell through such settlement, do not touch upon or afford an accord and satisfaction for the private injuries alleged to have been sustained by him through the acts and conduct of the appellees.

The Court is urged to find that the jurisdiction over the acts and conduct complained of against the appellees does not repose solely with the National Labor Relations Board; that the District Court has subject matter jurisdiction over the action; and, there is no accord and satisfaction by which the appellees have a right to dismiss the complaint in the instant action.

POINT II

UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, THE APPELLEES ARE NOT IMMUNE FROM PERSONAL LIABILITY AND THE COMPLAINT DOES STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The appellee Davidson was at all times material to the action, the Postmaster in New City, New York. The appellee Boyd was at all times material herein, the Supervisor of Mails and Delivery at such Post Office. The appellants will readily concede that they were officials of the United States Postal Service. Ordinarily, if they had acted within the scope of their authority, they might be immune from the instant suit. But, most certainly, the scope and authority of the appellees, including the outer perimeters of such authority, does not include the violation of law.

The settlement agreement, through the National Labor Relations Board, is evidence that the United States Postal Service violated the National Labor Relations Act, as amended. While such settlement agreement does contain an exculpatory clause, this Court can readily pierce that veil and determine as a matter of reason that the settlement agreement would not have been entered into except that the National Labor Relations Board investigation of the charges filed by the appellant disclosed

a violation of law.[1/] It does not fall within the appellees' scope of authority, or even the outer perimeters of such authority, to violate that statute. Again, it is to be noted that the appellees were not personally joined as respondents or parties in interest in the National Labor Relations Board proceeding. The acts and conduct of the appellees complained of herein, under the above principle, consisted of interrupting the employment status of the appellant, as well as the refusal and failure to file the necessary claims forms for him to obtain compensation benefits.

As to the latter, the attention of the Court is called to Title 18 of the United States Code, Section 1922, which provides as follows:

"Whoever, being an officer or employee of the United States charged with the responsibility of making the reports of the immediate superior specified by Section 8120 of Title 5, willfully fails, neglects, or refuses to make any of the reports or knowingly files a false report or induces, compels or directs an injured employee to forego filing any claim for compensation or other benefits provided under subchapter I of chapter 81 of Title 5, or any extension or application thereof or willfully retains any notice, reports, claims, or paper which is required to be filed under that subchapter or any extension or application thereof, or regulations prescribed thereunder, shall be fined not more than $500.00 or imprisoned for not more than one year, or both."

[1/] Because of the exculpatory clause, the appellants may have to prove such violations on trial here.

The failure of the appellees, or their refusal or neglect, to file the necessary reports for the appellant Charles Brownsell to receive his compensation benefits was a crime, subject to proof upon the trial here. Certainly, the scope of the authority of the appellees, or the outer perimeters of such authority, did not constitute the power and authority to violate the aforementioned statute and commit a crime.

For these above reasons, the case citations in the appellees' Memorandum of Law in support of the mentioned motion before the District Court, are not in point and are not applicable to a resolution of that motion.[2/]

The doctrine or principle of immunity would not be properly invoked in favor of the appellees in this case. Therefore, the complaint herein should not be dismissed on the principles of immunity or for a failure to state a claim upon which relief may be granted.

2/ The District Court did not reach these arguments of the appellees and the dismissal of the complaint was not grounded on such basis. However, mention of such argument before the District Court is made in connection with the Court's review of the total record below.

CONCLUSION

For all the foregoing reasons, this Court is respectfully urged to reverse the Court below, reinstate the complaint herein and direct that the matter move to trial.

Respectfully submitted,

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New City, New York 10956
(914) 634-4464

DOCKET ENTRIES

BROWNSEL, CHARLES et ano vs. DAVIDSONM ARCHIE st ano

75 Civ. 5241

JUDGE MACMAHON

DATE	NR	PROCEEDINGS
1/22/75	1	Filed Petition for removal from Supreme Court Rockland County, New York
1/15/76		Pre Trial Conference (Judge MacMahon)
3/25/76		File pltffs complt & demand for jury trial
4/6/76		Filed answer to complt by defendant
4/19/17		Filed defendants motion pursuant to Rule 12(c) for jugment & pleadings Ret. 4-30-76
4/19/76		Filed defdts memo of law in support of motion to dismiss complaint
5/13/76		Filed pltffs memo of law in opposition to defts motion to dismiss the complt. (Filed in Court 4/27/76)
5/10/76		Filed Endorsement & Order on Motion dated 4/19/76. Defdts move, pursuant to Rule 12(c) for judgment on the pleadings dismissing the compit on the ground that this court lacks jurisdiction. For the reasons indicated, defdts motion is granted..... MacMahon, J.
5/25/76		Filed Judgment & Order that defdts have judgment against pltffs dismissing the complt.....Clerk. n/m/
7/6/76		Fld Pltffs' Notice of Appeal to USCA from order ent 5/10/76 mld to U.S. Attys Office 1 St. Andrews Plaza, N.Y.C.

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

Bys/_____
Deputy Clerk

JOD:CCC

NOTICE OF REMOVAL (Dated October 22, 1975)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

CHARLES BROWNSELL and
CAZILIE BROWNSELL,

Plaintiff,

-v-

ARCHIE DAVIDSON and
JOAN BOYD,

Defendants.

NOTICE OF REMOVAL

Index No. 1064

PLEASE TAKE NOTICE that a verified petition, a copy of which is annexed hereto, requesting removal of the above-captioned action, which is pending in the Supreme Court of the State of New York, County of Rockland, to the United States District Court for the

JOC:ccc

Southern District of New York, was filed today with the Clerk of that District Court pursuant to the provisions of 28 U.S.C. §§1442(a)(1) and 1446.

Dated: New York, New York
October 22, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants Davidson
and Boyd

By: John M. O'Connor
JOHN M. O'CONNOR
Assistant United States Attorney
Office & Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1978

TO: CLERK
Supreme Court of the State of New York
County of Rockland
New City, New York 10956

RICHARD W. HOSEN, ESQ.
Attorney for Plaintiff
120 North Main Street
New City, New York 10956

PETITION FOR REMOVAL
(Filed October 22, 1975)

JMO:rms
75-3321
M-990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

CHARLES BROWNSELL and
CAZILIE BROWNSELL,

Plaintiffs,

-v-

ARCHIE DAVIDSON and JOAN BOYD,

Defendants.

----------x

U.S. DISTRICT COURT
FILED 10-22-75
S.D. of NEW YORK

PETITION FOR REMOVAL

75 Civ. 5241
(LFM)

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of defendants Archie Davidson and Joan Boyd, by their attorney, Paul J. Curran, United States Attorney for the Southern District of New York, respectfully stated, upon information and belief:

1. Both the defendant Davidson and the defendant Boyd received a copy of the attached Summons With Notice less than thirty days prior to the date of this petition.

2. The defendant Archie Davidson is the Postmaster of the New City Post Office in Rockland County, New York. The defendant Joan Boyd is the Foreman of Mails, a supervisory position at the New City Post Office.

3. The plaintiff Charles Brownsell is a letter carrier for the New City Post Office.

4. This action arises out of personnel action taken by the defendants against Charles Brownsell in his official position as a letter carrier on October 6, 1972. The present action may be removed from State court to the district court of the United States pursuant to 28 U.S.C. § 1442(a)(1) pertaining to actions against an officer of the United States or agency thereof, or person acting under such an officer, for any act under color of such office.

JMO:rms
75-3321
M-990

WHEREFORE, it is requested that this action be removed to this court.

Dated: New York, New York

October 22, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for defendants.

By: John M. O'Connor
JOHN M. O'CONNOR
Assistant United States Attorney
1 St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1978

Sworn to
10/22/75

COMPLAINT
(Filed March 25, 1976)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -x

CHARLES BROWNSELL and CAZILIE BROWNSELL,

Plaintiffs,

-against-

ARCHIE DAVIDSON and JOAN BOYD,

Defendants.

- -x

COMPLAINT

75 CIV 5241(LFM)

Plaintiffs complaining of the defendants, by their attorney, allege as follows:

1. Plaintiff, CHARLES BROWNSELL, was and is, at all times material herein, a resident of Rockland County, State of New York, and a letter carrier employed at the New City, New York Post Office.

2. Plaintiff, CAZILIE BROWNSELL, was and is, at all times material herein, a resident of Rockland County, State of New York, and the wife of the plaintiff, CHARLES BROWNSELL.

3. Upon information and belief, the defendant, ARCHIE DAVIDSON, was and is a resident of Rockland County, State of New York and the duly appointed and constituted Postmaster of

the New City, New York Post Office. In such capacity as Postmaster, the said defendant was in charge of and supervised the personnel and operations of the New City, New York Post Office.

4. Upon information and belief, defendant, JOAN BOYD, was and is a resident of Rockland County, State of New York, and a duly appointed and constituted Supervisor, including the Superintendent of Mails, assigned to the New City, New York Post Office.

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF, CHARLES BROWNSELL

5. That for many years, before October 6, 1972, plaintiff CHARLES BROWNSELL was employed as a letter carrier at the New City, New York Post Office, and was a member of Branch 5229, National Association of Letter Carriers, and was an officer, chief shop steward and grievance representative of such Branch 5229, which positions and offices he held through and including all times material herein, and which positions and offices he continues to hold up to the present time.

6. That by reason of such offices and positions held by the plaintiff CHARLES BROWNSELL in Branch 5229, he dealt with and exercised his offices and positions as a representative of the collective bargaining agent of letter carriers employed

in the New City, New York Post Office, with the defendants DAVIDSON and BOYD.

7. That on or about October 6, 1972, the defendant DAVIDSON, with the participation of the defendant BOYD, failed, refused and neglected to process official claims forms relating to on-the-job injuries previously sustained by the plaintiff CHARLES BROWNSELL.

8. That on or about October 6, 1972, the defendant DAVIDSON, with the participation of the defendant BOYD, terminated, laid off or otherwise caused the plaintiff CHARLES BROWNSELL, to be severed in his employment as a letter carrier employed in the New City, New York Post Office, and failed, refused and neglected to honor, and they did deny, his applications made on and after October 10, 1972, to be reinstated to his former position as a letter carrier employed in the New City, New York Post Office; such failure, refusal and neglect to reinstate the plaintiff, CHARLES BROWNSELL, continuing until on or about September 29, 1975, when he was reinstated to his former position as a letter carrier in the New City, New York Post Office pursuant to a settlement agreement entered into between the plaintiff CHARLES BROWNSELL, the United States Postal Service and the National Labor Relations Board, in Case

Numbers 2-CA-12926(P) and 2-CA-13052(P).

9. That the complained of acts and conduct of defendant DAVIDSON and the defendant BOYD were due solely based upon and in retaliation for the exercise by the plaintiff CHARLES BROWNSELL of his representative capacities on behalf of Branch 5229, including collective bargaining activities and grievance representation in the negotiation of various collective bargaining agreements and on behalf of bargaining unit members, under obligations in existence between the New City, New York Post Office and Branch 5229 of the National Association of Letter Carriers.

10. That the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, set forth in Paragraphs 7, 8 and 9 above, were done willfully, maliciously and without [illegible] authority, and for the purpose of retaliation, punishment and to inflict injury against the plaintiff CHARLES BROWNSELL, and for his activities on behalf of Branch 5229 and bargaining unit employees.

11. That by reason of the foregoing acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CHARLES BROWNSELL, suffered and sustained the following injuries:

(a) Loss and/or delay of claims benefits on his on-the-job injuries for which lawful claim was made by him.

(b) Loss of salary and benefits enjoyed or to be enjoyed by the plaintiff CHARLES BROWNSELL, in his employment as a letter carrier in the New City, New York Post Office.

(c) Expenditures of funds for legal services in procuring and obtaining his claims benefits for on-the-job injuries through the Bureau of Employee Compensation, and his reinstatement to his former employment through the National Labor Relations Board.

12. That by reason of all the foregoing, the plaintiff CHARLES BROWNSELL, has been damaged in the sum of TEN THOUSAND AND 00/100 ($10,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, CHARLES BROWNSELL

13. Plaintiff CHARLES BROWNSELL repeats each and every allegation contained above in Paragraphs 1 through 11 as if more fully set forth at this point in the complaint.

14. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CHARLES BROWNSELL was forced and required to go into serious and deep debt.

15. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, plaintiff CHARLES BROWNSELL was forced and required to seek the aid of the Rockland County Social Services Department, thereby applying for and receiving welfare benefits.

16. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CHARLES BROWNSELL suffered serious and irreparable physical, emotional, mental and psychological injuries and anguish, some of which are, upon information and belief, deemed to be permanent.

17. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CHARLES BROWNSELL was caused to be subjected to gross embarrassment because of his loss of employment and earnings, being subjected to unusual and deep debt, and his having to be placed upon welfare payments through the Rockland County Social Services Department, all of which became public knowledge.

18. That by reason of the foregoing, the plaintiff CHARLES BROWNSELL suffered and sustained damages and injuries

in the sum of ONE HUNDRED THOUSAND AND 00/100 ($100,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF CHARLES BROWNSELL

19. Plaintiff CHARLES BROWNSELL repeats each and every allegation contained in Paragraphs 1 through 17 as if more fully set forth at this point in the complaint.

20. Since the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD were done willfully, maliciously and without legal authority, and for the purpose of retaliation, punishment and to inflict injury, plaintiff CHARLES BROWNSELL seeks punitive damages in the sum of FIFTY THOUSAND AND 00/100 ($50,000.00) DOLLARS.

AS AND FOR A CAUSE OF ACTION ON BEHALF OF PLAINTIFF CAZILIE BROWNSELL

21. Plaintiff CAZILIE BROWNSELL repeats each and every allegation contained above in Paragraphs 1 through 11 as if more fully set forth at this point in the complaint.

22. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, plaintiff CAZILIE BROWNSELL was forced and required to go into serious and deep debt.

23. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the

plaintiff CAZILIE BROWNSELL was forced and required to seek the aid of the Rockland County Social Services Department, thereby applying for and receiving welfare benefits.

24. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CAZILIE BROWNSELL suffered serious and irreparable physical, emotional, mental and psychological injuries and anguish, some of which are, upon information and belief, deemed permanent.

25. That by reason of the complained of acts and conduct of the defendant DAVIDSON and the defendant BOYD, the plaintiff CAZILIE BROWNSELL was caused to be subjected to gross embarrassment because of the loss of her husband's employment and earnings, being subjected to unusual and deep debt, and her having to be placed upon welfare benefits through the Rockland County Social Services Department, all of which became public knowledge.

26. That by reason of the foregoing, the plaintiff CAZILIE BROWNSELL, suffered and sustained damages and injuries in the sum of FIFTY THOUSAND AND 00/100 ($50,000.00) DOLLARS.

WHEREFORE, the plaintiff CHARLES BROWNSELL demands judgment against the defendants on his first cause of action

in the amount of TEN THOUSAND AND 00/100 ($10,000.00) DOLLARS; on his second cause of action in the amount of ONE HUNDRED THOUSAND AND 00/100 ($100,000.00) DOLLARS; and on his third cause of action in the amount of FIFTY THOUSAND AND 00/100 ($50,000.00) DOLLARS; and the plaintiff CAZILIE BROWNSELL demands judgment on her cause of action in the amount of FIFTY THOUSAND AND 00/100 ($50,000.00) DOLLARS; and both plaintiffs demand the costs and disbursements of their actions.

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GMO:mkb
75-3321
d-403

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

CHARLES BROWNSELL and CAZILIE BROWNSELL,

Plaintiffs,

- v -

ARCHIE DAVIDSON and JOAN BOYD,

Defendants.

- x

ANSWER

75 Civ. 5241 (LFM)

The defendants Archie Davidson, Postmaster of New City, New York, and Joan Boyd, Supervisor of Mails and Delivery at the New City Post Office, by their attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, for their answer to the complaint herein state as follows:

FIRST: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1 and 2 of the complaint, except admit that the plaintiff Charles Brownsell is a letter carrier employed at the New City, New York, Post Office.

SECOND: Admit the allegations contained in paragraphs 3, 4, 5 and 6 of the complaint.

THIRD: Deny the allegations contained in paragraphs 7 through 26 inclusive of the complaint, except admit as follows:

(a) On or about October 6, 1972, the plaintiff Charles Brownsell was advised not to report to work until such time as he was fully physically able to perform all the duties of his position;

(b) At some time subsequent to October 6, 1972, the plaintiff Charles Brownsell requested to be fully restored to the position of letter carrier;

(c) Pursuant to a settlement agreement entered into between the plaintiff Charles Brownsell and the National Labor Relations Board in Cases Numbers 2-CA-12926 (P) and 2-CA-13052(P), the plaintiff Charles Brownsell was restored to the position of letter carrier on September 29, 1975.

FIRST DEFENSE

FOURTH: The complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

FIFTH: All conduct of the defendants with regard to the matters stated in the complaint were done by them as officials of the United States Postal Service in the course of their official duties for which conduct the defendants are immune from suit, and the complaint, therefore, fails to state a claim upon which relief may be granted.

THIRD DEFENSE

SIXTH: All conduct of the defendants with regard to the matters stated in the complaint were done by them as officials of the United States Postal Service and in the exercise of their discretion for which conduct the defendants are immune from suit and the complaint, therefore, fails to state a claim upon which relief may be granted.

FIRST AFFIRMATIVE DEFENSE

SEVENTH: The acts and injuries complained of were the subject of a charge (see Exhibit A) by plaintiff Charles Brownsell against the United States Postal Service before the National Labor Relations Board, which charged ended in a settlement agreement dated September 23, 1975, signed and accepted by the plaintiff (Exhibit B) in full satisfaction of all claims and any alleged injuries arising out of the acts complained of.

JMO:mkb
d-403

EIGHTH: All monies and credits of time to be awarded to the plaintiff Charles Brownsell under the settlement agreement have been paid over or credited to the plaintiff Charels Brownsell.

SECOND AFFIRMATIVE DEFENSE

NINTH: The Court lacks subject matter jurisdiction over the claims set forth in the complaint because they relate solely to personnel action taken by an employer against a Union official-employee, allegedly on the basis of discrimination against an employee for his Union position and activity, matters solely within the jurisdiction of the National Labor Relations Board.

THIRD AFFIRMATIVE DEFENSE

TENTH: The complaint must be dismissed because the claim is barred by the applicable statute of limitations.

Dated: New York, New York
April 2, 1976.

Yours, etc.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the Defendant.

By: /s/
JOHN M. O'CONNOR
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1978

TO: RICHARD W. ROSEN, ESQ.
120 North Main Street
New City, New York 10956

EXHIBIT A - PLAINTIFF'S CHARGE BEFORE THE NATIONAL LABOR RELATIONS BOARD ANNEXED TO FOREGOING ANSWER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

UNITED STATES POSTAL SERVICE

and

CHARLES E. BROWNSELL

CASES NOS. 2-CA-12926(P)
2-CA-13052(P)

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

It having been charged before the National Labor Relations Board, herein called the Board, in Cases Nos. 2-CA-12926 (P) and 2-CA-13052 (P) by Charles E. Brownsell, herein called Brownsell, that United States Postal Service, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the NLRA, and the Postal Reogranization Act, 39 U.S.C. Sec. 101, et seq., herein called the PRA, and having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay:

IT HEREBY IS ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Acting Director, Region 2, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1.(a) The Charge in Case No. 2-CA-12926 (P) was filed by Brownsell on April 4, 1973, and served by registered mail upon Respondent on or about April 4, 1973.

(b) The Charge in Case No. 2-CA-13052 (P) was filed by Brownsell on July 24, 1973, and served by registered mail upon Respondent on or about July 24, 1973.

2. The Board has jurisdication over this matter by virtue of Section 1209 of the PRA. The facility involved in this proceeding is the Post Office located at Main Street, New City, Rockland County, State of New York.

3. Respondent is, and has been at all times material herein, an employer within the meaning of Section 2(2) of the NLRA and within the meaning of the PRA.

4. National Association of Letter Carriers, AFL-CIO, herein called NALC and Branch 5229, NALC, AFL-CIO are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the NLRA and PRA.

5.(a) At all times material herein, Respondent has maintained in force and effect a collective-bargaining agreement with NALC covering certain of its employees employed at its facility located in New City, New York.

(b) At all times material herein Branch 5229 NALC, has administered on behalf of NALC, the collective-bargaining agreement described above in subparagraph (a).

(c) At all times material herein, Brownsell has been a chief shop steward for NALC and Branch 5229, NALC and has been the represenative and agent of said labor organizations at the facility located in New City, New York.

6.(a) On or about October 6, 1972, Respondent's postmaster and its agent, A.C. Davidson, refused to process official claim forms relating to an on-the-job injury previously incurred by Brownsell.

(b) On or about October 6, 1972 Respondent, by Davidson, laid off Brownsell.

(c) Since on or about October 10, 1972, Brownsell has applied for reinstatement to his former position of employment but Respondent, by Davidson, has denied his application for employment.

(d) Since the dates set forth above in subparagraphs (b) and (c), Respondent has failed and refused to recall, or offer to recall, Brownsell to his former or substantially equivalent postion of employment.

(e) Respondent engaged in the conduct described above in subparagraphs (a)(b) and (c) because Brownsell engaged in protected and concerted activities for the purpose of collective bargaining and mutual aid and protection.

7. By the acts described above in paragraph 6, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the NLRA and within the meaning of the PRA.

8. By the acts described above in paragraph 6 and by each of said acts, Respondent discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the NLRA and within the meaning of the PRA.

PLEASE TAKE NOTICE that on the 10th day of June, 1975, at 11:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the Acting Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Consolidated Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Cases is Attached.

Dated at New York, New York this 16th day of April 1975.

[illegible]
Winifred D. Davis, Acting Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

EXHIBIT B - SETTLEMENT AGREEMENT DATED SEPTEMBER 3, 1975 ANNEXED TO FOREGOING ANSWER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION

- -x

In the Matter of

UNITED STATES POSTAL SERVICE,

Charged Party,

- and -

CHARLES BROWNSELL,

Charging Party.

Case Nos.
2-CA-12926(P);
2-CA-13052(P)

- -x

WHEREAS, the UNITED STATES POSTAL SERVICE, hereinafter called the Charged Party, CHARLES BROWNSELL, hereinafter called the Charging Party, and the REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, hereinafter called the Regional Director, are currently entering into a settlement agreement covering the resolution of the above referred to cases, and

WHEREAS, the above referred to settlement agreement provides for and makes reference to a separate agreement between the Charged Party and Charging Party, and

WHEREAS, the Charged Party and Charging Party desire to enter into an agreement between them, which shall be incorporated

by a reference in the settlement agreement entered into by the Charged Party, Charging Party and Regional Director, as referred to above.

NOW, THEREFORE, the Charged Party and the Charging Party hereby agree as follows:

1. The Charging Party shall receive a gross lump sum payment of Five Thousand and 00/100 ($5,000.00) Dollars, which lump sum shall be subject to tax and other legitimate deductions, in full payment of all back pay claims relating to the above mentioned cases. In the event that the Charging Party is not reinstated to duty as appears below, on or before October 1, 1975, he shall receive an additional sum amounting to eighty (80%) per cent of the difference between his gross pay for each day on and after October 1, 1975 and the amount he receives as disability compensation from the Bureau of Employees Compensation.

2. As to any monies the Charging Party has received as disability compensation from the Bureau of Employees Compensation, heretofore, they shall be deemed to be interim earnings and the Charged Party agrees, that it will not seek to apply any lump sum payments made to the Charging Party as a result of this agreement to offset any amounts that he has received and has been paid by the Bureau of Employees Compensation.

3. The Charged Party will credit the Charging Party with two hundred ninety seven (297) hours of annual leave and one hundred forty eight (148) hours of sick leave, which represents eighty (80%) per cent of the leave that the Charging Party would have accrued had he been working at his position during the period July 1, 1973 through September 22, 1975. It is further agreed that should the Charging Party not be reinstated to duty by October 1, 1975, he shall accrue and receive credit on annual leave and sick leave to the extent of eighty (80%) per cent accrual on and after October 1, 1975 to the date he is reinstated to his position.

4. From the annual leave and sick leave, set forth in Paragraph 3 above, two hundred ninety seven (297) hours of annual leave and thirteen (13) hours of sick leave, at the rate of $6.69 per hour, shall be administratively applied by the Charged Party against the debt the Charging Party owes the Charged Party, in the sum of Two Thousand Seventy Two and 42/100 ($2,072.42) Dollars, and that the Charged Party shall deliver to the Charging Party written evidence that the aforementioned debt has been satisfied.

5. The Charged Party shall reinstate the Charging Party to his former route as a letter carrier, as he held on October 6, 1972, with the understanding that he is under a medical restriction and shall not be required to lift items in excess of fifteen (15) pounds, or to perform duties necessitating excessive bending, and that his duties as of October 6, 1972 did not require foot

deliveries, and with the further understanding that the Charging Party will perform his duties at a level of reasonably normal productivity and that he will perform a normal forty (40) hour per week schedule with reasonable exception being made for illness and absence due to injury.

6. Consistent with Paragraph 5 above, the precise duties that will be performed by the Charging Party will be agreed upon at a conference between the officials of the Charged Party, the Charging Party and a representative of the Letter Carriers Union.

7. The reinstatement of the Charging Party, as set forth above, shall be without prejudice to the Charging Party's seniority, other rights and privileges and which have accrued to him during the period encompassed by the above referred to cases.

8. None of the above shall be deemed to be an admission that the Charged Party, or any of its officers or agents has violated the National Labor Relations Act, as amended.

Dated: New City, New York

September 22, 1975

UNITED STATES POSTAL SERVICE,
New City, New York Post Office,
Charged Party

By_____
(Name and Title)

CHARLES BROWNSELL, Charging Party

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of 25a

UNITED STATES POSTAL SERVICE

CASES NOS. 2-CA-12926(P)
2-CA-13052(P)

and

CHARLES BROWNSELL

SETTLEMENT AGREEMENT

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for a period of at least 60 consecutive days from the date of posting, copies of the Notice attached hereto and made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit [illegible] signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY — The Charged Party will make whole the employees named below by payment to each of them of the amount set opposite his or her name.

CHARLES BROWNSELL- $ 5,000 plus credit for sick and annual leave per agreement between the parties.

NON ADMISSION—Nothing contained herein shall be deemed an admission by the Charged Party that it has violated the National Labor Relations Act.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging party fails or refuses to become a party to this Agreement, then, if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 10 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case.

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

UNITED STATES POSTAL SERVICE
NEW CITY NEW YORK POST OFFICE
(Charged Party)

By: Stuart A. Abramson
Sr. Asst. Regional Labor Counsel
(Name and Title)

Date: Sept. 23,1975

Recommended: 9/23/75

By: /s/ Alexander P. Rosenberg
Board Agent

CHARLES BROWNSELL
(Charging Party)

By:
(Name and Title)

Date: 9-22-75

Approved: 9-23-75

By:
Regional Director
National Labor Relations Board

G P O 420-069

BEST COPY AVAILABLE

NOTICE TO EMPLOYEES

26a

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to process official claim forms of our employees relating to on-the-job injuries incurred by them because they engage in concerted activities for the purposes of collective-bargaining or other mutual aid and protection.

WE WILL NOT lay off or discharge, or refuse to recall or refuse to reinstate our employees to their positions of employment with us because they engage in concerted activities for the purposes of collective-bargaining or other mutual aid and protection.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist Branch 5229 National Association of Letter Carriers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective-bargaining or other mutual aid and protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by such lawful agreements in accordance with Section 8(a)(3) of the National Labor Relations Act.

WE WILL offer to Charles Brownsell, in accordance with the terms of our agreement with him, immediate and full reinstatement to his former position or if such position no longer exists to a substantially equivalent position without prejudice to his seniority or other rights and privileges.

WE WILL pay to Charles Brownsell, in accordance with the terms of our agreement with him, a sum of money to make him whole for any loss of pay and benefits which he may have incurred as a result of a personnel action taken in relation to him on October 6, 1972; and, WE WILL, in accordance with the terms of our agreement with him, award to Charles Brownsell appropriate credits for sick leave and annual leave.

UNITED STATES POSTAL SERVICE
NEW CITY POST OFFICE

By: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced.

JHO:mkb
75-3321

MOTION AND NOTICE OF MOTION FOR JUDGMENT ON PLEADINGS

(Filed April 19, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

CHARLES BROWNSELL and CAZILIE BROWNSELL,

Plaintiffs,

- v -

ARCHIE DAVIDSON and JOAN BOYD,

Defendants.

- - - - - - - - - - - - - - - - - - - x

MOTION AND NOTICE OF MOTION FOR JUDGMENT ON PLEADINGS

75 Civ. 4241 (LFM)

PLEASE TAKE NOTICE that the defendants Archie Davidson and Joan Boyd, now named Joan Hoyt, hereby move, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, for a judgment on the pleadings in favor of the defendants, dismissing the complaint and granting costs to the defendants, on the ground that the Court lacks jurisdiction over the claims set forth in the complaint and that the complaint fails to state a claim upon which relief may be granted. This motion will be brought on for a hearing before Judge Lloyd F. MacMahon, on Friday, April 30, 1976, at 2:15 P.M., or as soon thereafter as counsel can be heard, in Room 501, United States Courthouse, Foley Square, New York, New York 10007.

PLEASE TAKE FURTHER NOTICE that pursuant to General Rule 9(c) of this Court any papers in opposition must be served by April 27, 1976, and, if served by mail, by April 24, 1976.

Dated: New York, New York
April 16, 1976

Yours, etc.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants.

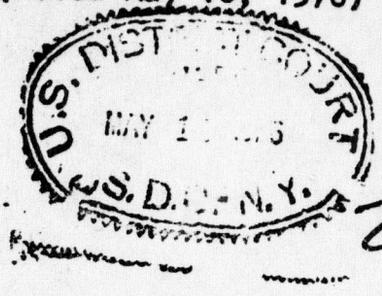
By: John H. O'Connor
JOHN H. O'CONNOR
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1978

TO:

RICHARD W. ROSEN, ESQ.
120 North Main Street
New City, New York 10956
Telephone: (914) 634-4464

ENDORSED MEMORANDUM OF MacMAHON, U.S.D.J.

MEMO ENDORSED — (Filed May 10, 1976)



Brownsell v. Davidson

ENDORSEMENT
75 Civ. 5241-LFM

Defendants move, pursuant to Rule 12(c), Fed. R.Civ.P., for judgment on the pleadings dismissing the complaint on the ground that this court lacks jurisdiction.

The complaint alleges that defendants, the Postmaster of New City, New York and the Supervisor of Mails and Delivery at the New City Post Office, failed to process claims by plaintiff, Charles Brownsell, relating to on-the-job injuries and laid him off between October 6, 1972 and September 29, 1975 in retaliation for his activities as a representative of Branch 5229, National Association of Letter Carriers. These allegations are essentially claims of unfair labor practices under Section 8(a) of the National Labor Relations Act, 29 U.S.C. § 158(a). The National Labor Relations Board has exclusive jurisdiction over claims arguably subject to the Act. San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 245 (1959).

MAY 1

Accordingly, defendants' motion for judgment on the pleadings dismissing the complaint is granted.

So ordered.

Dated: New York, N. Y.
May 7, 1976

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

Form No. USA-33a-270

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHARLES BROWNSELL & CAZILIE BROWNSELL,

Appellants,

- against -

ARCHIE DAVIDSON & JOAN BOYD,

Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK COUNTY OF NEW YORK *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York

That on the 7th *day of* Sept. *19*76 at 1 St. Andrews Plaza New York, N.Y.

deponent served the annexed brief & appendix *upon* Robert Fiske, U.S. Attorney, Southern District

the appellee *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein.*

Sworn to before me, this 7th
day of September *1976*

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
No. 41-4625150
Qualified in Queens County
Commission Expires March 30, 1978

Victor Ortega

VICTOR ORTEGA